

## § 1156.8

## 45 CFR Ch. XI (10–1–00 Edition)

as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(b) *Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by §1156.6 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

(c) *Remedial and affirmative action by recipients.* If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

### § 1156.8 Burden of proof.

The recipient of Federal financial assistance bears the burden of proving that an age distinction or other action falls within the exceptions outlined in § 1156.7.

## Subpart C—Responsibilities of Endowment Recipients

### § 1156.9 [Reserved]

### § 1156.10 General responsibilities.

A recipient has primary responsibility to ensure that its programs and activities are in compliance with the

Age Discrimination Act, to take steps to eliminate violations of the Act, and to provide notice to beneficiaries of its programs and activities concerning protection against discrimination provided by the Act and the regulations in this part. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to the Endowment to the extent required to determine whether it is in compliance with the Act.

### § 1156.11 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from the Endowment to subrecipients, the recipient shall provide the subrecipients with written notice regarding the subrecipient's obligations under the Act and the regulations in this part.

### § 1156.12 Self-evaluation.

(a) Each recipient employing the equivalent of 15 or more full time employees may be required to complete a written self-evaluation, in a manner specified by the responsible Endowment official during the course of an investigation, of any age distinction imposed in its program or activity receiving Federal financial assistance from the Endowment to assess the recipient's compliance with the Act.

(b) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(c) Each recipient shall make the self-evaluation available on request to the Endowment and to the public for a period of three years following its completion.

### § 1156.13 Information requirements.

Each recipient shall:

(a) Make available to the Endowment, upon request, information necessary to determine whether the recipient is complying with the regulations in this part.

(b) Permit reasonable access by the Endowment to the books, accounts and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act.